

## National Foundation on the Arts and the Humanities

## § 1170.21

order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(f) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(g) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

### § 1170.13 Illustrative examples.

(a) The following examples will illustrate the application of the foregoing provisions to some of the activities funded by the National Endowment for the Humanities.

(1) A publication or a museum catalogue supported by the Endowment may be made usable by the blind and the visually impaired through cassette tapes, records, discs, braille, readers and simultaneous publications.

(2) A lecture, meeting or symposium supported by Federal funds may be made available to deaf and hearing impaired persons through the use of a sign language interpreter or by providing scripts in advance of the performance.

(3) Specific programs supported by Federal funds may be offered in an inaccessible facility provided that the same program is also offered to the public at large in an accessible space.

(4) A qualified handicapped person is one who is able to meet all of a program's requirements in spite of his handicap. An educational institution is not required to disregard the disabilities of handicapped individuals or to lower or to make substantial modifications of standards to accommodate a handicapped person.

(b) State humanities committees are obligated to develop methods of administering Federal funds so as to ensure that handicapped persons are not subjected to discrimination on the basis of handicap either by sub-grantees or by the manner in which the funds are distributed.

(c) In the event Endowment funds are utilized to construct, expand, alter,

lease or rent a facility, the benefits of the programs and activities provided in or through that facility must be conducted in accordance with these regulations, e.g., a museum receiving a grant to renovate an existing facility must assure that all museum programs and activities conducted in that facility are accessible to handicapped persons.

(d) In carrying out the mandate of section 504 and these implementing regulations recipients should administer Endowment assisted programs and activities in the most integrated setting appropriate, e.g., tours made available to the hearing impaired should be open to the public at large and everyone should be permitted to enjoy the benefits of a tactile experience in a museum.

### §§ 1170.14–1170.20 [Reserved]

## Subpart C—Employment Practices

### § 1170.21 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from Federal financial assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(d) *Specific activities.* The provisions of this subpart apply to:

## **§ 1170.22**

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(e) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

### **§ 1170.22 Reasonable accommodation.**

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's

## **45 CFR Ch. XI (10–1–02 Edition)**

program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

### **§ 1170.23 Employment criteria.**

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria are unavailable.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or other factors relevant to adequate performance of the job in question.

### **§ 1170.24 Preemployment inquiries.**

(a) A recipient may not, except as provided below, conduct a preemployment medical examination, make preemployment inquiry as to whether the applicant is a handicapped person, or inquire as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) If a recipient is taking remedial action to correct the effects of past discrimination, if a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, or if a recipient is taking affirmative action under section 503 of the Rehabilitation Act, the recipient may invite applicants for employment to indicate